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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.           | CONFIRMATION NO.       |
|--|-------------|----------------------|-------------------------------|------------------------|
| 10/526,458   | 03/03/2005  | Reinhold Opper       | A-10274                       | 3831                   |
| 181 7590 08/21/2007<br>MILES & STOCKBRIDGE PC<br>1751 PINNACLE DRIVE<br>SUITE 500<br>MCLEAN, VA 22102-3833 |             |                      | EXAMINER<br>SAETHER, FLEMMING |                        |
|  |             |                      | ART UNIT<br>3677              | PAPER NUMBER           |
|  |             |                      | MAIL DATE<br>08/21/2007       | DELIVERY MODE<br>PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/526,458

Applicant(s)

OPPER, REINHOLD

Examiner

Flemming Saether

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) 4, 6, 7, 17, 19 and 28-36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 8-16, 18 and 20-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 March 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### ***Election/Restrictions***

Applicant's election of species A in the reply filed on 7/30/2007 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Claims 4, 6, 7, 17, 19 and 28-39 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there currently being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 7/30/07.

### ***Specification***

The disclosure is objected to because of the following informalities: the specification appears to be a translation from a foreign priority and includes the informalities inherent therewith and should be reviewed and revised accordingly to ensure it complied with current US standards. For example it lacks the headings and it is improper for the specification to refer to the claims.

Appropriate correction is required.

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the polygonal and pyramidal surfaces must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3, 5, 8-16, 18 and 20-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be

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a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors. Some examples are as follows: in claim 1, "in particular" is indefinite, line 3, there is no antecedent basis for "its free end", line 3, 4, the "deformation segment" and "connecting segment" reads as though it is a free end which appears incorrect, line 5, "serving to" is indefinite, line 6, "in particular" is again indefinite, line 7, there is no antecedent basis for "the foot", line 7, "a mandrel" appears a double inclusion, line 9, "essentially" is indefinite, in claim 3, the shank end cannot be open if it forms an end face as defined in claim 1; claim 5 is a double inclusion since its limitations have already been claimed; in claim 13, it is unclear how the entire element would be polygonal. Applicant should review all the claims to make appropriate corrections to ensure they comply with the requirements of section 112. The claims were examined as best understood.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

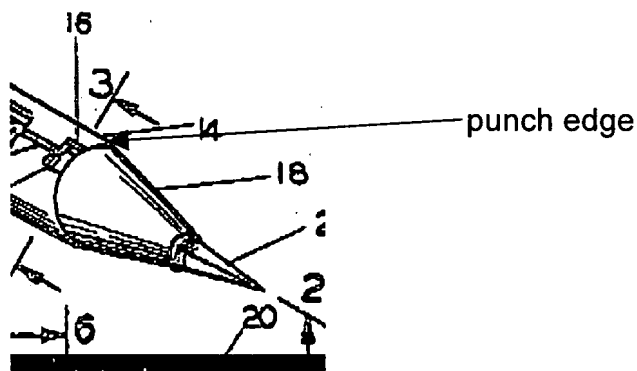
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5, 8, 10, 11, 14-16 18, 20, 22, 23, 26 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Tendler (US 3,398,627). Tendler discloses a blind rivet (A) comprising a hollow shank (9-11) having a sethead (4), a deformation segment (see Fig. 8) and a connection segment for connecting to a foot (19) of a

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mandrel (21). The shank includes an end face (20, 28) having an outer periphery which meets the outermost periphery of the shank to form a punch edge (see below) and the mandrel forms a protrusion (28) at the center of the end face though an open end of the shank. The end face is shown to be overall smooth with a conical (at 20) and pyramidal (at 28) surface and is circular in cross section (see Fig. 3). The mandrel includes a widened head and the other end is inherently hardened by the formation of the threads and pointed tip.



### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9, 12, 21 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tender. Tender does not disclose the amount of angle at the end

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face being in the range of 93 to 96 degrees. However, the angle would have been obvious thought routine experimentation because at the time the invention was made, it would have been obvious for one of ordinary skill in the art to experiment with the angles to find the optimal angel for the end face for the fastener to be driven though a particular material. Once the angle was recognized, the shallow head would have been an inherent side effect.

Claims 13 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tendler as applied to claims 1 and 3 above, and further in view of Lesowsky (US 4,353,673). Lesowsky teaches, as an alternative, to make the make the fastening element substantially polygonal (see Figs. 9-11). At the time the invention was made, it would have been obvious for one of ordinary skill in the art to make the device of Tendler in a substantially polygonal shape as disclosed in Lesowsky since the polygonal shapes as an alternative to the circular shape.

### ***Conclusion***

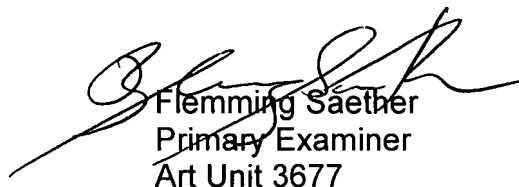
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Flemming Saether whose telephone number is 571-272-7071. The examiner can normally be reached on Monday through Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 571-272-7075. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Flemming Saether  
Primary Examiner  
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